

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kurt Dobbins et al.
Serial No: 10/791,655
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FOR SWITCHED COMMUNICATION NETWORKS
Examiner: Toan D. Nguyen
Art Unit: 2416

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being electronically filed in accordance with § 1.6(a)(4), on the 24th day of March, 2010.

/James C. De Vellis/
James C. De Vellis, Reg. No. 52,814

Commissioner for Patents

**REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT
PURSUANT TO WYETH DECISION AND INTERIM PROCEDURE**

Dear Sir:

Patentees hereby request that the Patent Term Adjustment for the above-identified U.S. Patent be reconsidered. It is Patentee's belief that the Patent Term Adjustment on the issued patent (set at 908 days as stated on the Determination of Patent Term Adjustment document mailed from the Patent Office on December 24, 2009 is incorrect and that the Patent Term Adjustment for which the above-identified patent is entitled is **1408 days** based on non-overlapping "B" type delay.

Patentee respectfully submits this request for recalculation of Patent Term Adjustment. It is the Patentee's understanding that no fee is due for this request, however, if there is a fee occasioned by this request, please charge any deficiency to Deposit Account No. 50/2762, Reference No. E2003-701430.

Under 37 CFR § 1.702(a) (hereinafter “Examination Delay”), Patentees are entitled to a period of patent term adjustment which is a period of delay of A type delay of 1142 days due to failure by the U.S. Patent & Trademark Office (“the PTO”) to mail an action under 35 USC § 132 not later than 14 months after the actual filing date (hereinafter “14 Month Delay”) (see 37 CFR § 1.702(a)(1)), and a period of patent term adjustment of for failure by the Office to respond to a reply under 35 U.S.C. §132 not later than four months after the date on which the reply was filed (hereinafter “4 month Delay”) (see 37 CFR § 1.702(a)(2)).

Calculations:

PTO Delay

Filing Date:	March 1, 2004
Target Date First Office Action:	May 1, 2005
Actual Date First Office Action:	June 12, 2008 (1138 days)
Response to Office Action:	May 26, 2009
Deadline for Notice of Allowance:	September 26, 2009
Notice of Allowance Mailed:	September 30, 2009 (4 days)
Type A Delay:	$1138 + 4 = 1142$ days (Agrees with PTO)

Applicant Delay

Missing Parts Received:	May 21, 2004
Filed Response to Same:	December 21, 2004 (121 days)
Non-Final Office Action:	November 25, 2008
Filed Response to Same:	May 26, 2009 (90 days)
Response Filed:	May 26, 2009
Information Disclosure Filed:	June 18, 2009 (23 days)
Applicant Delay:	234 days (Agrees with PTO)

Accordingly, as the Office has concluded, Patentees are entitled to a total period of Examination delay under 37 CFR § 1.702(a) of 908 days (1142 days – 234 days).

In addition to the patent term adjustment due to Examination Delay according to 37 CFR § 1.702(a), Patentees respectfully submit that they are also entitled to a period of patent term

adjustment under 37 CFR § 1.702(b) due to failure of the Office to issue a patent within three years after the date the corresponding application was filed under 35 USC § 111(a). The period of adjustment under 37 CFR § 1.702(b) is the number of days in the period beginning on the date after the date that is three years after the date on which the application was filed under 35 USC 111(a) and ending on the date the patent issued, but not including the number of days in the period beginning on the date on which a request for continued examination (RCE) of the application under 35 USC § 132(b) was filed and ending on the date the patent was issued (see 37 CFR 1.702(b)(1)).

Calculations:

Filing Date:	March 1, 2004
Target Issue Date:	March 1, 2007
RCE Filed:	October 29, 2009
Type B Delay:	973 days

Since the target issue date is more than three years after the filing date of the application under 35 USC § 111(a), Patentees are entitled to a period of patent term adjustment beginning on the day after the date that is three years after the filing date of the application, and ending on the date that is the day before the RCE was filed. Accordingly, the period of patent term adjustment due to the Three Year Delay by the Office is 973 days.

With respect to the above-referenced application, the total period of Office Delay is the sum of the period of 14 Month Delay, the period of 4 Month Delay and the period of Three Year Delay to the extent such periods of delay are not overlapping.

Overlap Calculation:

Overlap 14 mo. and B delay:	March 1, 2007
End Overlap 14 mo. and B delay:	June 12, 2008
Overlap:	469 days
Overlap 4 mo. and B Delay:	September 25, 2009
End Overlap 4 mo. and B Delay:	September 30, 2009
Overlap:	4 days
Total:	473 days

Accordingly, Patentees submit that the total period of Office Delay pursuant to the Wyeth decision is 1642 days, which is the sum of the period of Examination Delay (1142 Days) and the period of Three Year Delay (973 days) minus the Overlapping Delay (473 days).

Under 37 CFR § 1.703(f), to calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay as specified in 37 CFR § 1.704. The USPTO has calculated the period of Applicant delay to be 234 days (see above). Thus, the total delay should be **1408 days**, (1642 days – 234 days).

Calculation:

$$\begin{array}{r r r r r r} \text{(Type A delay)} & + & \text{(Type B delay)} & - & \text{(Overlap Delay)} & - & \text{(Applicant Delay)} & = & \text{Total Delay} \\ (1142) & & + (973) & & - (473) & & - (234) & & = \mathbf{1408 \text{ days}} \end{array}$$

The issue fee date is paid herewith, March 24, 2010. Therefore, if the patent issues on the Tuesday before the date that is 28 weeks after the December 24, 2009 mailing of the Notice of Allowance, Applicant respectfully requests a Patent Term Adjustment of 1,408 days. Should the patent issue after that date, Applicant respectfully requests an additional Patent Term Adjustment of one day for each day beyond that date.

CONCLUSION

In view of the foregoing amendments and remarks, reconsideration is respectfully requested. If any issues are presented by this request, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an accompanying payment, please charge any deficiency to Deposit Account No. 50/2762, Reference E2003-701430.

Respectfully submitted,

Kurt Dobbins et al., Applicant

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